

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: MUSHROOM DIRECT	)	Master File No. 06-0620
PURCHASER ANTITRUST LITIGATION	)	
	)	Nos.: 06-03523
THIS DOCUMENT RELATES TO:	)	
	)	Judge O'Neill
GIANT EAGLE, INC. v. EASTERN	)	
MUSHROOM MARKETING	)	
COOPERATIVE, INC., ET AL. 06-03523)	)	

**DEFENDANT M. CUTONE MUSHROOM CO., INC.'S  
JOINDER IN AND SUPPLEMENT TO THE MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND FOR RECONSIDERATION OF  
THE COURT'S MARCH 26, 2009 OPINION AT DOCKET ENTRY NO. 513**

Defendant M. Cutone Mushroom Company, Inc. respectfully joins in Defendants' Motion for Partial Summary Judgment on the Entitlement to Immunity from Plaintiff's Claims Under Section I of the Sherman Act and for Reconsideration of this Court's March 26, 2009 which was filed under seal on January 6, 2014 and is located at docket entry 513. Defendant Cutone incorporates all of the arguments set forth therein and requests all of the relief requested therein and Cutone requests that this Court enter the order accompanying that motion. In further support of that Motion, Defendant Cutone avers:

1. It is uncontested that M. Cutone Mushroom Co., Inc. ("Cutone") entered into a Membership Agreement with the Eastern Mushroom Marketing Cooperative ("EMMC") on or about January 20, 2001. See Exhibit "A."
2. It is uncontested that the representative of Cutone to the EMMC voted against the EMMC land acquisition initiative when the decision was reached by the EMMC to purchase land previously used to grow mushrooms became available to be purchase. See Exhibit "B" (Excerpt of Deposition of Michael Cutone, Michael Cutone, May 2, 2008, pp./ 106-107.

3. It is uncontested that by letters dated March 4, 2002, May 20, 2002 and June 19, 2002, Cutone gave notice to the EMMC of its intent to withdraw from the EMMC. See Exhibit "C."

4. It is uncontested that by letter dated June 19, 2002, the EMMC accepted the Cutone withdrawal and deemed, pursuant to the EMMC by laws, that the withdrawal would become effective on September 1, 2002. See Exhibit "D."

5. It is uncontested that no member of the EMMC asked or encouraged Cutone to maintain the EMMC minimum pricing level after Cutone's termination of its EMMC membership. See Exhibit "B", pp. 234-235.

WHEREFORE, for the reasons set forth in the Motion for Partial Summary Judgment on the Entitlement to Immunity from Plaintiff's Claims Under Section I of the Sherman Act and for Reconsideration of this Court's March 26, 2009, as supplemented by the accompanying memorandum of law, it is respectfully requested that this Court enter judgment in favor of Cutone and against all of the plaintiffs in this action.

**LITCHFIELD CAVO, L.L.P.**

BY:

  
\_\_\_\_\_  
Joel I. Fishbein  
1515 Market Street, Suite 1130  
Philadelphia, PA 19103  
(215) 557-0771  
[fishbein@litchfieldcavo.com](mailto:fishbein@litchfieldcavo.com)

Attorney for Defendant  
M. Cutone Mushroom Co., Inc.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

0620	IN RE: MUSHROOM DIRECT	)	Master File No. 06-
	PURCHASER ANTITRUST LITIGATION	)	
	THIS DOCUMENT RELATES TO:	)	Nos.: 06-03523
		)	
	GIANT EAGLE, INC. v. EASTERN	)	Judge O'Neill
	MUSHROOM MARKETING	)	
	COOPERATIVE, INC., ET AL. 06-03523)	)	

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT M. CUTONE MUSHROOM CO., INC.'S  
JOINDER IN AND SUPPLEMENT TO THE MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND FOR RECONSIDERATION OF  
THE COURT'S MARCH 26, 2009 OPINION AT DOCKET ENTRY NO. 513**

**I. INTRODUCTION**

Defendant M. Cutone Mushroom Co., Inc. ("Cutone") hereby joins in and briefly supplements the Motion for Partial Summary Judgment and for Reconsideration of the Court's March 26, 2009 Opinion. For the reasons set forth below, Cutone respectfully requests that the Court enter the proposed order accompanying defendants Motion at Docket Entry No. 513.

**II. FACTUAL BACKGROUND**

Cutone entered into a Membership Agreement with the Eastern Mushroom Marketing Cooperative ("EMMC") on or about January 20, 2001. See Exhibit "A." During the course of Cutone's brief membership in the EMMC, Cutone voted against the EMMC land acquisition initiative when the decision was reached by the EMMC to purchase land previously used to grow mushrooms became available to be purchase. See

Exhibit “B” (Excerpt of Deposition of Michael Cutone, Michael Cutone, May 2, 2008, pp. 106-107).

By letters dated March 4, 2002, May 20, 2002 and June 19, 2002, Cutone gave notice to the EMMC of its intent to withdraw from the EMMC. See Exhibit “C. Then, by letter dated June 19, 2002, the EMMC accepted the Cutone withdrawal and deemed, pursuant to the EMMC by laws, that the withdrawal would become effective on September 1, 2002. See Exhibit “D.”

No member of the EMMC asked or encouraged Cutone to maintain the EMMC minimum pricing level after Cutone’s termination of its EMMC membership. See Exhibit “B”, pp. 234-235.

### **III. LEGAL ARGUMENT**

The remaining claims in this case against Cutone require evidence that Cutone participated in an antitrust conspiracy. A defendant in an antitrust conspiracy, like a defendant in any conspiracy case, can eliminate or limit its legal responsibility for the damage caused by the conspiracy if it shows that it withdrew from the conspiracy. See United States v. Continental Group, Inc., 603 F.2d 444, 466-67 (3d Cir. 1979). However, as explained in Continental Group “mere cessation of activity in furtherance of the conspiracy is not sufficient to establish withdrawal.” Id. at 467. Rather, “the defendant must present evidence of some affirmative act on his part, typically either a full confession to authorities or communication to his co-conspirators that he has abandoned the enterprise and its goals.” See United States v. Steele, 685 F.2d 793, 804 (3d Cir.) (citing United States v. United States Gypsum Co., 438 U.S. 422, 464-65 (1978) and United States v. Lowell, 649 F.2d 950, 955 & n.7 (3d Cir. 1981)), cert. denied 459 U.S. 908 (1982).

In its opinion in Continental Group, the Third Circuit quoted the trial court's jury instruction on withdrawal from an antitrust conspiracy, in relevant part, as follows:

For a defendant to be deemed to have withdrawn there must be evidence showing withdrawal by some affirmative action. Such action must consist of a definite and decisive step of some kind which shows complete disassociation. For example, to disavow or defeat the purpose of a conspiracy or some other conduct wholly inconsistent with continued adherence to the conspiratorial objects would be the type of decisive act that a party could look to as being the basis for withdrawal.

A defendant may also withdraw from a price fixing conspiracy by notifying his alleged co-conspirators of his intent to withdraw. Such notification can consist of any communication or conduct reasonably calculated to reach the other alleged co-conspirators and proof of such communication does not require evidence that the defendant directly informed each alleged co-conspirator of his or its intention to withdraw.

Continental Group, 603 F.2d 444, 466-67 (3d Cir. 1979). The evidence establishes that Cutone did precisely what the law, as explained in this jury instruction, required to evidence its withdrawal from what was later alleged to be an antitrust conspiracy.

The facts in the Steele case are also instructive. The conspiracy alleged in Steele involved the payment of bribes by three individuals and three corporations including General Electric Co. to government officials in Puerto Rico. One of the individuals indicted and convicted was Robert Naples. Mr. Naples appealed his conviction on the basis that he withdrew from the conspiracy by resigning from General Electric. As was the case in Steele, the facts surrounding Cutone's withdrawal from the alleged conspiracy have not, and cannot be rebutted. Indeed, this is the rare conspiracy case in which there is a letter by an alleged co-conspirator affirmatively withdrawing from the alleged conspiracy. See Exhibit "C."

Moreover, prior to its unambiguous written withdrawal from the EMMC, through statements in board meetings, Cutone informed its alleged co-conspirators that it

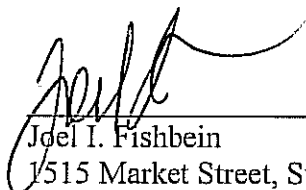
disagreed with the policy of acquiring mushroom farms both on principal, and because Cutone could not afford the financial commitment. See Exhibit "B", pp. 106-07. Importantly, once Cutone withdrew from the EMMC, its presence as a member could no longer serve as the foundation for the court's conclusion that its presence in the EMMC destroyed the EMMC's Capper-Volstead immunity.<sup>1</sup>

#### IV. CONCLUSION

For the foregoing reasons, Cutone joins in the Motion for Partial Summary Judgment and for Reconsideration of the Court's March 26, 2009 Opinion and Cutone respectfully requests that the Court enter the proposed order accompanying defendants Motion at Docket Entry No. 513.

**LITCHFIELD CAVO, L.L.P.**

BY:



Joel I. Fishbein  
1515 Market Street, Suite 1130  
Philadelphia, PA 19103  
(215) 557-0771  
[fishbein@litchfieldcavo.com](mailto:fishbein@litchfieldcavo.com)

Attorney for Defendant  
M. Cutone Mushroom Co., Inc.

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<sup>1</sup> The court explicitly based its decision rejecting EMMC's claim to Capper-Volstead immunity on the presence of the Cutone entity in the EMMC. It reserved judgment on whether material factual disputes existed concerning the memberships of Leone Pizzini and Son, Inc., Brownstone Mushroom Farms, Inc. and LRP-M Mushroom, LLC would have also resulted in EMMC's loss of the Capper-Volstead exemption. See In re Direct Purchaser Mushroom Antitrust Litigation, 621 F.Supp.2d 274, 286 n.13 (E.D. Pa. 2009).

**CERTIFICATE OF SERVICE**

I, Joel I. Fishbein, do hereby certify that I served a true and correct copy of Defendant M. Cutone Mushroom Co., Inc.'s Joinder in and supplement to the Motion for Partial summary Judgment and for Reconsideration of the Court's March 26, 2009 Opinion at docket Entry No. 513 on January 15, 2014 using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.


David P. Smith W. Ross Foote Percy, Smith & Foote, L.L.P. 720 Murray Street P.O. Box 1632 Alexandria, Louisiana 71309 Tel: (318) 445-4480 Fax: (318) 487-1741	Brent B. Barriere David Patron Susie Morgan Phelps Dunbar, L.L.P. Canal Place 365 Canal Street, Suite 2000 New Orleans, Louisiana 70130 Tel: (504) 584-9210 Fax: (504) 568-9130
Robert T. Kelly, Jr. Myers, Brier & Kelly, LLP 425 Spruce Street, Suite 200 P.O. Box 551 Scranton, Pennsylvania 18501-0551 Tel: (570) 342-6100 Fax: (570) 342-6147	Adam Moskowitz Tucker Ronzetti Kozyak, Tropin & Throckmorton, P.A. 2525 Ponce De Leon, 9 <sup>th</sup> Floor Coral Gables, Florida 33134 Tel: (305) 372-1800 Fax: (305) 372-3508
John Gregory Odom Stuart E. Des Roches Odom & Des Roches, L.L.P. Suite 2020, Poydras Center 650 Poydras Street New Orleans, Louisiana 70130 Tel: (504) 522-0077 Fax: (504) 522-0078	Robert A. Kutcher Chopin, Wagar, Richard & Kutcher 3850 Notih Causeway Boulevard, Suite 900 Metairie, Louisiana 70002 Tel: (504) 830-3838 Fax: (504) 836-9540
Alfred G. Yates Law Office of Alfred G. Yates, Jr., P.C. 519 Allegheny Building 429 Forbes Avenue Pittsburgh, Pennsylvania 15219 Tel: (412) 391-5164 Fax: (412) 471-1033	Anthony J. Bolognese Joshua H. Grabar Bolognese & Associates, LLC One Penn Center Plaza 1617 JFK Boulevard, Suite 650 Philadelphia, Pennsylvania 19103 Tel: (215) 814-6750 Fax: (215) 814-6764

Michael D. Hausfeld Brian A. Ratner Cohen, Milstein, Hausfeld & Toll, P.L.L.C. 1100 New York Avenue, N.W. West Tower, Suite 500 Washington, D.C. 20005 Tel: (202) 408-4600 Fax: (202) 408-4669	Linda P. Nussbaum Kaplan, Fox & Kilsheimer, LLP 805 Third Avenue, 22 <sup>nd</sup> Floor New York, New York 10022 Tel: (212) 687-1980 Fax: (212) 687-7714
Paul E. Slater Sperling & Slater, P.C. 55 West Monroe Street, Suite 3300 Chicago, Illinois 60603 Tel: (312) 641-3200 Fax: (312) 641-6492	Eugene A. Spector Jeffrey L. Kodroff Jeffrey J. Corigan Jay S. Cohen Spector Roseman & Kodroff 1818 Market Street, Suite 2500 Philadelphia, Pennsylvania 19103 Tel: (215) 496-0300 Fax: (215) 496-6611
Nathan Neuman Law Offices of Nathan Neuman 700 Lake Drive Ambler, Pennsylvania 19002 Tel: (215) 646-9520 Fax: (215) 646-9521	R. Scott Palmer Manuel J. Dominguez Berman, DeValerio, Pease, Tabacco, Burt & Pucillo 222 Lakeview Avenue, Suite 900 West Palm Beach, Florida 33401
Donald M. Barnes Salvatore A. Romano Porter, Wright, Morris & Arthur, LLP 1919 Pennsylvania Avenue NW, Suite 500 Washington, D.C. 20006-3434 Tel: (202) 778-3000	William A. DeStefano Rudolph Garcia Joseph Joseph R. Loverdi Buchanan Ingersoll P.C. 1835 Market Street, 14 <sup>th</sup> Floor Philadelphia, Pennsylvania 19103-3887 Tel: (215) 665-3887
H. Laddie Montague, Jr. Martin I. Twersky Berger & Montague, P.C. 1622 Locust Street Philadelphia, Pennsylvania 19103-6365 Tel: (215) 875-3000 Fax: (215) 875-4671	Abraham C. Reich Fox, Rothschild, O'Brien & Frankel, LLP 2000 Market Street, 10 <sup>th</sup> Floor Philadelphia, Pennsylvania 19103 Tel: (215) 299-2090



Donna M. Albani Law Offices of Donna M. Albani 11 Hampton Lane Glen Mills, Pennsylvania 19432 Tel: (610) 459-8858	Thomas K. Schindler Brown, Mayhart, Martin & Schindler, 112 West Courthouse Alley West Chester, Pennsylvania 19380 Tel: (610) 436-9100
Amy R. Richter 621 SW Morrison Street, Suite 1300 Portland, Oregon 97205-3816 Tel: (503) 224-0435	Barbara Sicalides Pepper Hamilton, LLP 3000 Two Logan Square 18th & Arch Streets Philadelphia, Pennsylvania 19103 Tel: (215) 981-4000 Fax: (215) 689-4532
Neill C. Kling Francis P. Newell Harkins Cunningham, LLP 2800 One Commerce Square 2005 Market Street Philadelphia, Pennsylvania 19103 Tel: (215) 851-6700 Fax: (215) 851-6710	Tanya W. Bowman Theresa A. Canaday Frost, Brown, Todd, LLC 400 West Market Street, 32 <sup>nd</sup> Floor Louisville, Kentucky 40202-3363 Tel: (502) 589-5400
Bruce E. Gerstein Noah H. Silverman Kevin Landau Garwin, Gerstein & Fisher, LLP 1501 Broadway, Suite 1416 New York, New York 10036 Tel: (212) 398-0055 Fax: (212) 764-6620	Barry L. Refsin Steve D. Shadowen Hangley, Aronchick, Segal & Pudlin One Logan Square, 21 <sup>st</sup> Floor Philadelphia, Pennsylvania 19103-6933 Tel: (215) 568-6200 Fax: (215) 568-0300

**LITCHFIELD CAVO LLP**



BY: \_\_\_\_\_  
**JOEL I. FISHBEIN**

**EXHIBIT “A”**

EASTERN MUSHROOM MARKETING COOPERATIVE  
MEMBERSHIP AGREEMENT

and

CERTIFICATE OF MEMBERSHIP

THIS MEMBERSHIP AGREEMENT and CERTIFICATE OF MEMBERSHIP (collectively, the "Agreement") is entered into between Eastern Mushroom Marketing Cooperative, a nonprofit agricultural cooperative association organized under the Commonwealth of Pennsylvania Cooperative Agricultural Association Law of 1990, as amended (the "Cooperative"), and M. Cutone Mushroom Co. ("Producer").

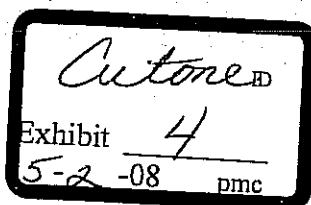
WITNESSETH:

WHEREAS, Producer is one of numerous producers engaged in the production and marketing of mushrooms;

WHEREAS, Producer can more efficiently and economically engage in such production and marketing by joining together with other such producers in a cooperative association;

WHEREAS, Producer represents and warrants to the Cooperative that Producer is presently engaged in the production and marketing of mushrooms;

WHEREAS, Producer bears the risks associated with the production of mushrooms, which is a highly perishable crop which must be marketed upon harvesting and which therefore has a history of distress selling and wide fluctuations in price beyond the control of individual producers;



Doc. #250844 v.05

By: *Thomas J. Matusz* 1-20-01, 2001  
President

By: *Anthony J. DeStefano*  
Secretary

PRODUCER

*M. C. Lane-Mushroom Co.* Date of Execution 1-20-, 2001

Address of Record:

*145 Market St*  
*Chelsea Ma 02150*

**EXHIBIT “B”**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
3 Master File No. 06-0620

4 -----x  
IN RE MUSHROOM DIRECT  
5 PURCHASER ANTITRUST  
LITIGATION

6 -----x

May 2, 2008

7 10:17 a.m.

8  
9  
10 30(b)(6) Videotaped Deposition of  
11 MICHAEL D. CUTONE, taken by Plaintiff,  
12 pursuant to Notice, held at the offices of  
13 Silverman Burns Kasmen & Krawitz, 2 Penn  
14 Center Plaza, 1500 JFK Boulevard,  
15 Philadelphia, Pennsylvania, before  
16 PATRICIA MULLIGAN CARRUTHERS, a Certified  
17 Shorthand Reporter and Notary Public of  
18 the State of New Jersey.  
19  
20  
21  
22  
23  
24  
25

1 M. CUTONE

2 wisdom of levying this assessment and  
3 purchasing these farms?

4 MS. PAWELSKI: Objection.

5 MS. ALBANI: Objection.

6 A. Say it again?

7 Q. Was there a discussion at the  
8 meetings you attended regarding the  
9 levying of a special assessment in the  
10 purchase of the Dublin and Hillsboro  
11 farms?

12 A. "Levying" meaning what?

13 Q. Making a special assessment to  
14 the members?

15 MS. ALBANI: Objection to the  
16 continued characterization as a "special  
17 assessment."

18 A. It was a group decision. We  
19 voted on it, but if you voted no -- it  
20 didn't --

21 Q. Right.

22 A. -- It didn't matter.

23 Q. What was your entity's vote?

24 A. No.

25 Q. Your vote was no?

1 M. CUTONE

2 A. Yeah.

3 Q. And that entity would be  
4 Avondale.

5 A. Avon -- Chelsea Avondale. I  
6 mean, Avondale division? What are --

7 Q. Which -- Which entity voted no  
8 at the meeting to purchase the Dublin and  
9 Hillsboro farms?

10 A. It wasn't an identity. I just  
11 voted no. I was at the meeting. I think  
12 my father was there, too. Voted no.

13 Q. Did you have one vote?

14 A. Yes. I think.

15 Q. Why didn't you want to purchase  
16 those farms, you being Cutone?

17 A. It was just getting out of  
18 hand. We couldn't afford it. We would  
19 have to borrow the money. It was, you  
20 know, just -- It wasn't in our budget.

21 Q. Okay. So was it a monetary  
22 concern on the part of Cutone?

23 A. Yeah. We -- Where they were  
24 buying the farms was not in anywhere I was  
25 selling mushrooms, so --



1. M. CUTONE

2 testimony that Cutone did not terminate  
3 its membership in the EMMC until September  
4 1st of 2002?

5 A. Correct.

6 Q. So would you say that the March  
7 4th, 2002, letter was superseded by the  
8 May 20th, 2002, letter?

9 A. Supersedious, huh? You're  
10 throwing that at me.

11 Q. Which letter was the effective  
12 letter in cancelling your membership in  
13 the EMMC?

14 A. There was three of them, so --

15 Q. Well, one wasn't apparently  
16 signed. Of the two that were signed,  
17 which letter was the letter that did the  
18 trick?

19 A. The 20th. Right? May 20th.

20 Q. Now, I believe you stated that  
21 even while Cutone was in the EMMC, it did  
22 not always adhere to the minimum pricing.  
23 Would that be a correct statement, correct  
24 summary of your testimony?

25 MR. LANDAU: Objection.

1. M. CUTONE

2. A. Yes.

3. Q. And after you left the EMMC,  
4. Cutone left the EMMC, did you continue to  
5. feel obligated or bound by any sort of  
6. policy in the EMMC after you left the  
7. organization?

8. A. No.

9. Q. So would you say you were free  
10. to price your mushrooms at whatever you  
11. wanted to price your mushrooms at after  
12. you left the EMMC?

13. A. Yes.

14. Q. And to the best of your  
15. recollection did you do so?

16. A. I'd have to check the records  
17. on that.

18. Q. Now, after you resigned from  
19. the EMMC, did any other EMMC member ask  
20. you or encourage you to maintain the  
21. minimum pricing level?

22. MS. CAIN-MANNIX: Objection.  
23. Asked and answered.

24. Q. You can answer.

25. A. No.

**EXHIBIT “C”**

Received 05/29/2002 10:29AM in 01:14 on line 101 for 2271 WORKSRV2 printed 800AEEF4 on 05/29/2002 10:31AM \*Pg 3/3  
MAY.29.2002 9:41AM MODERN MUSHROOM SALES NO. 700 P.3/3

## M. Cutone Mushroom Co., Inc.

CHELSEA, MA / AVONDALE, PA

RECEIVERS & COMMISSION MERCHANTS • FRUITS, VEGETABLES & FLOWERS  
145 MARKET STREET, CHELSEA, MA 02150  
MA (617) 889-1122 FAX (617) 884-8044 PA (610) 268-2271

May 20, 2002

Gary Schroeder  
Opkshire Mushroom Farms, Inc  
P.O. Box 749  
Horsham, PA 19044

Jack Roitnauer  
Modern Mushrooms  
1340 Newark Road  
Toughkenamon, PA 19374

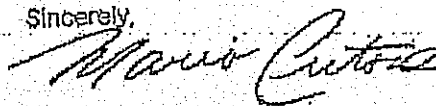
John Pla  
South Mill Mushroom Sales, Inc.  
P.O. Box 1037  
649 W. South Street  
Kennet Square, PA 19348-1037

Attention John, Jack & Gary,

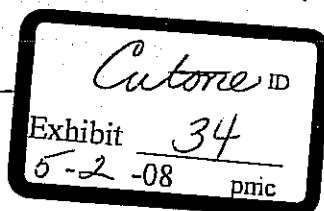
Please be advised that M. Cutone Mushroom Co, Inc. is terminating its membership with the E.M.M.C. Due to current circumstances we can no longer be bound to the rules and regulations of the cooperative.

Thank you.

Sincerely,



Mario Cutone  
President



EMMC-DOJ-00070  
CUTONE 0002

Received 03/19/2002 04:17PM in 00:46 on line 111 for 2271 WORKSRV2 printed 000A8296 on 03/19/2002 04:20PM \* Pg 2/2  
MAR. 19. 2002 4:27PM MODERN MUSHROOM SALES NO. 219 P. 2/2

## M. Cutone Mushroom Co., Inc.

CHELSEA, MA / AVONDALE, PA

RECEIVERS & COMMISSION MERCHANTS • FRUITS, VEGETABLES & FLOWERS

145 MARKET STREET, CHELSEA, MA 02150

MA (617) 889-1122 FAX (617) 884-3944 PA (610) 268-2271

March 4, 2002

Gary Schroeder  
Oakshire Mushroom Farms, Inc  
P.O. Box 388  
295 Thompson Road  
Kennett Square, PA 19348

Jack  
Modern Mushrooms  
1340 Newark Road  
Toughkenamon, PA 19374

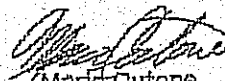
John Pla  
South Mill Mushroom Sales, Inc.  
P.O. Box 1037  
649 W. South Street  
Kennet Square, PA 19348-1037

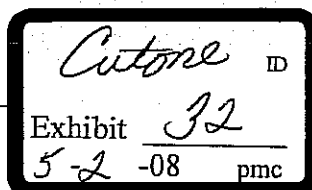
Attention John, Jack & Gary,

Please be advised that M. Cutone Mushroom Co., Inc. is terminating its membership with the E.M.M.C. Due to current circumstances we can no longer be bound to the rules and regulations of the cooperative. Although we will not be members, we fully intend to adhere to the pricing structure unless we are forced to alter it by other growers. Please return our escrow (\$5,000) and the balance of the capitol assessment (\$100,000).

Thank you.

Sincerely,

  
Mario Cutone  
President



EMMC-DOJ-00062  
CUTONE 0001

June 19, 2002

Gary Schroeder  
Oakshire Mushroom Farms, Inc  
P.O. Box 749  
Horsham, PA 19044

Jack Raitnauer  
Modern Mushrooms  
1340 Newark Road  
Toughkenamon, PA 19374

John Pia  
South Mill Mushroom Sales, Inc.  
P.O. Box 1037  
649 W. South Street  
Kennet Square, PA 19348-1037

Attention John, Jack & Gary,

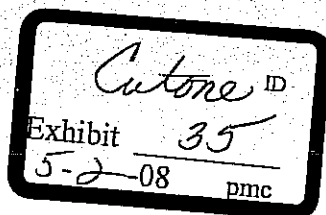
Please be advised that M. Cutone Mushroom Co, Inc. is terminating its membership with the E.M.M.C. Due to current circumstances we can no longer be bound to the rules and regulations of the cooperative.

Please send an acknowledgment for the termination of our membership.

Thank you.

Sincerely,

Mario Cutone  
President



CUTONE 0003

**EXHIBIT “D”**



MICHAEL A. FINIO  
Phone: (717) 238-7671  
Fax: (717) 257-7585  
mfinio@saul.com  
www.saul.com

June 19, 2002

Mario Cutone, President  
M. Cutone Mushroom Co., Inc.  
145 Market Street  
Chelsea, MA 02150

Re: Withdrawal from EMMC

Dear Mr. Cutone:

This letter will acknowledge your notice, given prior to June 15, 2002, of your desire to withdraw as a member of the EMMC. As you know, Section 1 of the Membership Agreement permits member withdrawals during the period June 15 to July 1 in each calendar year, subject to certain limitations, with a properly noticed withdrawal being deemed effective as of the end of the then-current membership year; that is, the termination is effective as of September 1.

While your notice was premature, the EMMC will, nevertheless, treat it as constructively having given notice during the proper time period. Your membership in the EMMC remains valid until September 1, 2002, and you remain responsible as a member as per all terms of the Membership Agreement and Bylaws and all policies adopted thereunder.

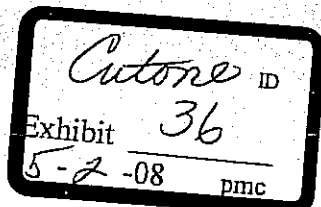
If you have any questions, please have your legal counsel contact me at 717-238-7671 or by e-mail, mfinio@saul.com, or by fax, 717-257-7585.

Thank you.

Very truly yours,

*Michael A. Finio*  
Michael A. Finio

MAF/klb  
cc: Jack Reitenauer



CUTONE 0004

2 North Second Street, 7<sup>th</sup> Floor • Harrisburg, PA 17101-1604 • Phone: (717) 257-7500 • Fax: (717) 238-4622

90254.1 6/19/02 BALTIMORE CHESTERBROOK HARRISBURG NEW YORK PHILADELPHIA PRINCETON WILMINGTON

A DELAWARE LIMITED LIABILITY PARTNERSHIP